

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

**NETWORK-1 SECURITY SOLUTIONS,
INC.**

Plaintiff,

vs.

CISCO SYSTEMS, INC., ET AL

Defendants.

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CASE NO. 6:08CV30

ORDER

As stated at the pretrial hearing on June 24, 2010, the Court **DENIES** as moot Foundry Networks LLC's Motion to Reset Trial Date (Docket No. 411), **DENIES** Defendants Cisco Systems, Inc. and Cisco-Linksys, L.L.C.'s Motion to Sever and for a Separate Trial (Docket No. 317), **DENIES** Defendants Cisco Systems, Inc. and Cisco-Linksys, L.L.C.'s Motion to Strike the Expert Reports of Dr. William E. Wecker, for Return of Cisco's Confidential Information, and for Sanctions (Docket No. 316), **DENIES** Defendants Cisco Systems, Inc. and Cisco-Linksys, L.L.C.'s *Daubert* Motion to Preclude the Expert Testimony of William Wecker (Docket No. 322), **DENIES** Defendants' *Daubert* Motion to Preclude the Expert Testimony of Robert Mills (Docket No. 324), **DENIES** Defendant Enterasys Networks Inc.'s *Daubert* Motion to Preclude the Expert Rebuttal Testimony of Robert Mills Regarding RAND (Docket No. 329), **DENIES** Plaintiff Network-1's Motion to Exclude Opinions and Testimony of Ms. Julie L. Davis (Docket No. 341), **DENIES** Defendants' Motion for Summary Judgment of Non-Infringement Based on Patent Exhaustion (Docket No. 303), **DENIES** Defendants Cisco Systems, Inc. and Cisco-Linksys, L.L.C.'s Motion

for Summary Judgment of No Willful Infringement, and No Induced or Contributory Infringement (Docket No. 292), **DENIES** Defendant 3Com Corporation's Motion for Summary Judgment and Joinder in, and Additional Support for, Cisco Systems, Inc. and Cisco-Linksys, L.L.C.'s Motion for Summary Judgment of No Willful, Induced, or Contributory Infringement [Dkt #292] (Docket No. 336), **DENIES** in part Defendant Adtran, Inc.'s Partial Joinder in Cisco's Motion for Summary Judgment of No Willful Infringement and No Contributory Infringement as to contributory infringement (Docket No. 287), **DENIES** Defendant Enterasys Networks, Inc.'s Partial Joinder in, and Additional Support for, Defendants Cisco Systems, Inc. and Cisco-Linksys, L.L.C.'s Motion for Summary Judgment of No Willful Infringement, and No Induced or Contributory Infringement (Docket No. 298), **DENIES** Defendant Extreme Networks, Inc.'s Partial Joinder in, and Additional Support for Cisco Systems, Inc. and Cisco-Linksys, L.L.C.'s Motion for Summary Judgment of No Willful Infringement and No Contributory Infringement (Docket No. 300), and **DENIES** Defendant Foundry Networks LLC's Joinder in Cisco Systems, Inc. and Cisco-Linksys, L.L.C.'s Motion for Summary Judgment of No Willful Infringement, and No Induced or Contributory Infringement (Docket No. 339).

The Court **CARRIES** Foundry Networks LLC's Motion for Summary Judgment of Non-Infringement (Docket No. 304), Defendant Enterasys Networks, Inc.'s Partial Joinder in, and Additional Support for, Foundry Networks Inc.'s Motion for Summary Judgment of Non-Infringement (Docket No. 305), and Plaintiff Network-1's Motion for Summary Judgment on Defenses of Anticipation (§ 102) and Obviousness (§ 103) (Docket No. 343).

The Court takes under advisement Plaintiff Network-1's Motion to Exclude Opinions and

Testimony of Dr. Robert Colwell (Docket No. 340), Plaintiff Network-1's Motion to Exclude Opinions and Testimony of Dr. Melvin Ray Mercer (Docket No. 342), and Network-1's Motion for Partial Summary Judgment of Defendants' "RAND" Related Defenses and Counterclaims (Docket No. 344)

Having considered the written submissions, the Court **DENIES** Cisco Systems, Inc. and Cisco-Linksys, L.L.C.'s Motion for Partial Summary Judgment to Limit Damages Under 35 U.S.C. § 287(a) (Docket No. 289), **DENIES** Defendant 3Com Corporation's Motion for Summary Judgment, and Joinder in, and Additional Support for, Cisco Systems, Inc. and Cisco-Linksys, L.L.C.'s Motion for Partial Summary Judgment to Limit Damages Under 35 U.S.C. § 287(a) [Dkt #289] (Docket No. 337), **DENIES** Defendant Enterasys Networks, Inc.'s Partial Joinder in, and Additional Support for, Cisco Systems, Inc. and Cisco-Linksys, L.L.C.'s Motion for Partial Summary Judgment to Limit Damages Under 35 U.S.C. § 287(a) (Docket No. 290), **DENIES** Defendant Extreme Networks, Inc.'s Partial Joinder in, and Additional Support for Cisco Systems, Inc. and Cisco-Linksys, L.L.C.'s Motion for Partial Summary Judgment to Limit Damages Under 35 U.S.C. § 287(a) (Docket No. 445), **DENIES** Defendant Foundry Networks's Partial Joinder in Cisco Systems, Inc. and Cisco-Linksys, L.L.C.'s Motion for Partial Summary Judgment to Limit Damages Under 35 U.S.C. § 287(a) (Docket No. 338), and **DENIES** Defendants' Motion to Strike Portions of the Expert Reports of Dr. James M. Knox (Docket No. 277).

The Court **ORDERS** the parties to meet and confer regarding their motions *in limine* to attempt to resolve them without Court intervention. In the event that are still disputed motions *in limine*, the Court will hear argument on the unresolved motions *in limine* on July 6, 2010 at 8:30 a.m.

The Court **ORDERS** the parties to notify the Court which motions in limine are unresolved by July 1, 2010.

The Court **ORDERS** the parties to meet and confer on proposed Findings of Fact and Conclusions of Law and a list of Bench-trial issues (in question form, much like a verdict form) and submit them to the Court by July 7, 2010. The Court further **ORDERS** the parties to resubmit their joint proposed final jury instructions in accordance with the Court's instructions as stated at the pretrial hearing by July 7, 2010. The parties shall file the proposed Findings of Fact and Conclusions of Law, list of Bench-trial issues, and joint proposed final jury instructions and shall email them in WordPerfect to Kat_Li@txed.uscourts.gov.

The Court will distribute the list of potential jurors to the parties via e-mail to their local counsel on Monday, July 5, 2010.

The Court is of the opinion that this case would benefit from mediation and **APPOINTS** Former Magistrate Judge Robert Faulkner, JAMS, 8401 North Central Expressway, Suite 610, Dallas, Texas 75225, (214) 744-5267, as mediator in this case. The Court **ORDERS** the parties to mediate with Judge Faulkner before trial commences on July 12, 2010 and strongly encourages the meditation to take place before jury selection on July 6, 2010. The Court further **ORDERS** that all people who have authority to negotiate and are required to reach a full and binding agreement be present at the mediation. Mediation shall be conducted in accordance with the Court-Annexed Mediation Plan. *See* Appendix H to Local Rules, available on the Court's website at www.txed.uscourts.gov.

The Court **GRANTS** the parties' Joint Motion Requesting Submission of a Juror

Questionnaire (Docket No. 448). The instructions will be read aloud and the questionnaire will be submitted to and filled out by potential jurors before jury selection on July 6, 2010.

The Court will allow the parties 30 minutes for voir dire, 45 minutes for opening statements, 14 hours for direct and cross examinations, and 60 minutes for closing arguments. The 14 hours includes issues that are tried to the Bench. The Court **ORDERS** the parties to notify the Court if they have any disputes regarding allocation of time by July 1, 2010 at 10:00 a.m. If there are any disputes, the Court further **ORDERS** the parties to file their briefs regarding the problems by July 1, 2010 at 10:00 a.m.

So ORDERED and SIGNED this 25th day of June, 2010.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**